

United States //

Circuit Court of Appeals

For the Ninth Circuit.

MARY J. DILLON (Formerly MARY J. TYNAN)
and THOMAS B. DILLON,
Plaintiffs in Error,

vs.

NORVENA LINEKER and FREDERICK V.
LINEKER,
Defendants in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of
the United States District Court of the
Northern District of California,
Second Division.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*In the Southern Division of the United States
District Court for the Northern District of Cali-
fornia.*

NORVENA LINEKER and FREDERICK V.
LINEKER,

Plaintiffs,

vs.

MARY J. DILLON (Formerly MARY J. TYNAN)
and THOMAS B. DILLON,

Defendants.

Complaint.

Come now the plaintiffs above named and complain of the defendants, and for cause of action allege:

I.

That the plaintiffs Frederick V. Lineker and Norvena Lineker are both citizens of the Dominion of Canada and subjects of George IV, King of England, and aliens; that plaintiffs are informed and believe and therefore allege that the defendants are citizens of the State of California and of the United States, and reside in the Northern District of California.

II.

That the amount in controversy herein, exclusive of interest and costs, exceeds the sum of \$3,000.00.

III.

That the plaintiff Norvena Lineker was married to the plaintiff Frederick V. Lineker on the 22d day of September, 1912, and ever since that date they have been and now are husband and wife; that prior

to the 22d day of September, 1912, the plaintiff Norvena Lineker's name was Norvena Svensen.

IV.

That the defendant Mary J. Dillon was married to Thomas B. Dillon in or about the month of June, 1918; but for more than nine years prior thereto her name was Mary J. Tynan.

V.

That for more than fifteen years prior to the commencement of [1*] this action the plaintiff Norvena Lineker has known the defendant Mary J. Dillon, formerly Mary J. Tynan; and for many years the plaintiff was well acquainted with one William Winter, son of said Mary J. Dillon, and for many years prior to, and at, the time she signed the note hereinafter mentioned, she was on terms of social intimacy with the said Mary J. Dillon and her son William Winter; that the said William Winter was a man of no wealth or means whatever and was in receipt of no income except small wages that he earned from work of various kinds.

VI.

That during all of said times the plaintiff Norvena Lineker was of pliable character and easily persuaded by those in whom she had trust and confidence; that she had had little or no business experience and was unable to properly manage or take care of her property, and that she was during all of said times likely to be deceived and imposed upon by artful and designing persons, and this weakness of character and susceptibility to imposition was well

*Page-number appearing at foot of page of original certified Transcript of Record.

known to the said defendant Mary J. Dillon and her son William Winter; that in or about the month of May, 1910, the plaintiff Norvena Lineker was in ill health and underwent a serious operation in the city of San Francisco, State of California; that while convalescing from said operation and illness she was taken by the defendant Mary J. Dillon to her home in the city of San Francisco to recuperate, and she remained at her house for some months; that during the time that she lived at the home of the defendant Mary J. Dillon, in the city and county of San Francisco, and before and after that time, the plaintiff Norvena Lineker (then Norvena Sevensen) reposed implicit confidence and trust in the said defendant Mary J. Dillon and her son William Winter, and during all of said time the said defendant Mary J. Dillon and said William Winter exercised great influence over the said plaintiff; that the said William Winter was during said time living at the home of his mother the said Mary J. Dillon.

VII.

That in the month of June, 1910, and for some months [2] prior and subsequent thereto, the plaintiff Norvena Lineker (then Norvena Svensen) was engaged to be married to the said William Winter.

VIII.

That on or about the 20th day of June, 1910, Norvena Lineker (then Norvena Svensen) was the owner of that certain piece and parcel of land, situate, lying and being in the county of Stanislaus, State of Cali-

fornia, and more particularly described as follows, to wit:

All that portion of the Northwest quarter of Section Six (6) in Township Four (4) South, Range Nine (9) east, Mount Diablo Base and Meridian, lying North of the road in said County known as the Paradise Road.

That said property is farm land and for the last nine years has, for the most part, been unoccupied or untilled and during said time has produced little income or profit; but because of its situation and its close proximity to the center of the business district of the city of Modesto the said property is of large and increasing value.

That during all the times herein mentioned the said property was and now is of the value of \$35,000.00 and upwards.

IX.

That the said property was on the said 20th day of June, 1910, subject to a life interest and estate therein in favor of one Ole Svensen, father of said plaintiff Norvena Lineker, and said property continued subject thereto until on or about the 7th day of August, 1916; that said Ole Svensen died on or about the 6th day of August, 1916, whereupon the said life estate of said Ole Svensen in said lands did terminate and end.

X.

That on the said 20th day of June, 1910, the plaintiff Norvena Lineker (then Norvena Svensen) was not in receipt of any income but was dependent for her support on moneys given to her by her father,

from time to time, in small amounts; that she had not since that time been in receipt of any income [3] sufficient even for her support until her marriage to the plaintiff Frederick V. Lineker; that the plaintiff Frederick V. Lineker is possessed of practically no means or estate, and he and the plaintiff Norvena Lineker are dependent almost entirely upon the wages earned by Frederick V. Lineker for their support and maintenance; that the defendant Mary J. Dillon was well acquainted with said plaintiff's financial condition during all of said times, and knew that said plaintiff during all of the times herein mentioned was in receipt of no income except as herein set forth; that said plaintiff has never been possessed of any property, means or estate other than as herein set forth.

XI.

That Mary J. Dillon, one of the above-named defendants, during the year 1910, and afterwards, was the owner of certain valuable land together with a hotel building thereon in the city of Modesto, county of Stanislaus, State of California, and that the said hotel building was in need of alterations, repairs and furnishings which would cost about \$3,000.00 or more.

XII.

That the defendant Mary J. Dillon, being desirous of obtaining funds with which to make the repairs, alterations and improvements to her said hotel property, as aforesaid, in or about the month of June, 1910, conspired and confederated with her said son, William Winter, to induce said plaintiff Norvena Lineker (then Norvena Svensen) to borrow for the

use and benefit of the defendant Mary J. Dillon such funds by pledging her interest in said land above described as security therefor; and for that purpose it was agreed between said defendant Mary J. Dillon and said William Winter that the said William Winter was to tell the plaintiff Norvena Lineker (then Norvena Svensen) that if she would advance the money necessary to make repairs and improvements to the said hotel property of the defendants Mary J. Dillon, that his mother, the defendant Mary J. Dillon, would [4] put him in charge of said hotel property as manager thereof, and that he would then be in receipt of sufficient income to marry and support the said plaintiff, then Norvena Svensen, and from the receipts of said hotel he and his mother could easily pay off any money that Norvena Svensen would borrow for the purpose of making said repairs, alterations and improvements to the said hotel property of the said defendant Mary J. Dillon, and satisfy such debt, and that they would pay off all money so borrowed and satisfy such debt and that they would save her, the said plaintiff, harmless from any loss or damage in connection therewith; that said William Winter did in pursuance of such conspiring and confederating together thereafter make such statements and representations to said plaintiff Norvena Lineker (then Norvena Svensen).

XIII.

That believing such statements and representations to be true, and in order to repair, improve and furnish the hotel property belonging to the said defendant Mary J. Dillon, for the purposes aforesaid, the

plaintiff Norvena Lineker (then Norvena Svensen) did on or about the 20th day of June, 1910, at the request of the defendant Mary J. Dillon and said William Winter, borrow from Daniel A. McColgan the sum of \$2,850.00, and then and there made and executed her promissory note in the sum of \$2,850.00 to the said Daniel A. McColgan, and to secure the payment thereof did, on the said 20th day of June, 1910, make and execute an instrument in writing, to wit, a trust deed, whereby she conveyed all her interest in said real property to one R. McColgan, as trustee for said Daniel A. McColgan.

XIV.

That at the time of the execution of said note and said trust deed to R. McColgan, the plaintiff Norvena Lineker (then Norvena Svensen) was in ill health and weak in body and mind to such an extent as to render her unfit to transact business; that she did not understand and at that time she was incapable of understanding that the borrowing of said money would injuriously affect her interest in said real property; and such [5] condition of the body and mind of said plaintiff was well known to said defendant Mary J. Dillon and to her said son William Winter.

XV.

That the said William Winter was not a man of any estate or means during any of said times and was not entitled to credit in any sum whatsoever; which facts were well known to said Daniel A. McColgan and to said defendant Mary J. Dillon.

XVI.

That said plaintiff Norvena Lineker (then Norvena Svensen) received in cash from the said Daniel A. McColgan on or about said 20th day of June, 1910, the sum of \$2,850.00, and upon receipt thereof immediately turned over the whole sum of \$2,850.00 to said William Winter, for the use and benefit of said defendant Mary J. Dillon; and the whole amount thereof was received by said defendant Mary J. Dillon or was spent and expended at her direction and for her use and benefit in making repairs, additions and alterations to her said hotel property, and in furnishing the same.

XVII.

That in or about the month of January, 1911, the repairs, additions and alterations to the hotel property of the defendant Mary J. Dillon had been made and completed with the money borrowed by Norvena Lineker (then Norvena Svensen) for the said defendant; that within a few days after the said repairs had been completed the said defendant Mary J. Dillon took over complete charge and control of the said hotel property, and refused thereafter to permit the said William Winter to have the management or any control thereof or to receive any of the profits thereof or income therefrom, and the contemplated marriage between the said Norvena Svensen and the said William Winter was never entered into or performed.

[6]

XVIII.

That the said Daniel A. McColgan did not cause the said trust deed to be recorded in the office of the

county recorder of Stanislaus County until on or about the 22d day of April, 1911; that on or about said 22d day of April, 1911, he demanded of Norvena Svensen that she forthwith pay to him the amount of said promissory note of \$2,850.00, and interest thereon, and he then told her that if she failed to do so he would cause her interest in said property to be sold; that immediately after the said Daniel A. McColgan demanded the payment of said note the plaintiff Norvena Lineker (then Norvena Svensen) went to see the defendant Mary J. Dillon (then Mary J. Tynan), and demanded of her that she immediately pay and satisfy said note and interest, and procure the satisfaction and cancellation of said trust deed; and she, the said plaintiff, then and there told said defendant that if she failed to pay and satisfy said note forthwith and cause said trust deed to be satisfied and discharged, she, the said plaintiff, would immediately bring action against the said defendant Mary J. Dillon (then Mary J. Tynan) and her son William Winter to recover the amount of said note.

XIX.

That thereupon the defendant Mary J. Dillon (then Mary J. Tynan) asked and importuned said plaintiff Norvena Lineker (then Norvena Svensen) not to begin or prosecute any action against her, the said defendant Mary J. Dillon or her son William Winter, to recover said money borrowed on said note from Daniel A. McColgan and secured by said trust deed; and the said defendant Mary J. Dillon (then Mary J. Tynan) did then and there promise and agree to and with the said plaintiff Norvena Lineker

(then Norvena Svensen) that if she, the said plaintiff, would refrain from instituting or prosecuting any action against her, the said defendant or said William Winter [7] concerning said money secured by said trust deed, that she, the said defendant Mary J. Dillon (then Mary J. Tynan), would hold and save the said plaintiff Norvena Lineker (then Norvena Svensen) harmless from any and all loss or damage by reason of the making of said note or said trust deed; and that she, the said defendant Mary J. Dillon, would cause said debt and interest to be paid and discharged and would procure said trust deed to be paid and satisfied, and she, the said defendant Mary J. Dillon, would indemnify and save harmless the said Norvena Lineker (then Norvena Svensen) from any loss or damage whatsoever in connection with said note and trust deed.

XX.

That relying upon said defendant's promise to save her harmless from any and all loss, as aforesaid, the plaintiff Norvena Lineker (then Norvena Svensen) refrained from bringing any action to recover such money from said defendant Mary J. Dillon (then Mary J. Tynan) or her son William Winter, or either of them, and she has not since commenced or prosecuted such action.

XXI.

That thereafter the said Daniel A. McColgan took various proceedings under the said trust deed, for the purpose of obtaining the money secured thereby, and large expense was incurred in connection therewith;

that several adjournments of the sale of said property, under said trust deed, were had from time to time, and further expense thereby incurred; and further expense for attorney's fees, and the like, were incurred by said plaintiff in an endeavor to prevent a sale of said property and a loss thereof to said plaintiff; that thereafter the said Daniel A. McColgan caused said property to be sold under said trust deed, and various other proceedings were had and taken by and on behalf of the said Daniel A. McColgan which resulted in this plaintiff, Norvena Lineker, being deprived of possession of said land and of her interest therein, and of the rents, issues and profits thereof, to her loss and damage in the sum of \$35,000.00. [8]

XXII.

That the defendant Mary J. Dillon failed and neglected to pay off said indebtedness incurred for her use and benefit, and failed and neglected to pay off said note or the interest which accumulated thereon, and failed to pay or satisfy said trust deed, and said defendant Mary J. Dillon has failed to hold or save the plaintiff harmless from any or all loss caused to or incurred by the said plaintiff on connection with said note and trust deed made by her in favor of said Daniel A. McColgan, to the loss and damage to the said plaintiff Norvena Lineker in the sum of \$35,000.00.

WHEREFORE, plaintiffs pray judgment against the said defendants in the sum of \$35,000.00 and their costs and disbursements herein.

JOHN L. TAUGHER,
Plaintiffs' Attorney.

United States of America,
Northern District of California,—ss.

Norvena Lineker, being first duly sworn, deposes and says: That she is one of the plaintiffs named in the above-entitled action; that she has read the foregoing complaint, and knows the contents thereof, and that the same is true of her own knowledge, except as to matters therein stated on information and belief, and that as to those matters she believes it to be true.

NORVENA LINEKER.

Subscribed and sworn to before me, this 26th day of October, A. D. 1918.

[Seal] H. S. WIGGINS,
Notary Public in and for the County of Alameda,
State of California.

[Endorsed]: Filed Oct. 30, 1918. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [9]

UNITED STATES OF AMERICA.

In the Southern Division of the United States District Court for the Northern District of California.

NORVENA LINEKER and FREDERICK V.
LINEKER,

Plaintiffs,

vs.

MARY J. DILLON (Formerly MARY J. TYNAN)
and THOMAS B. DILLON,

Defendants.

Action brought in said District Court, and the Complaint filed in the office of the Clerk of said District Court, in the City and County of San Francisco.

JOHN L. TAUGHER,
Plaintiffs' Attorney.

Summons.

The President of the United States of America,
GREETING: To Mary J. Dillon (Formerly
Mary J. Tynan) and Thomas B. Dillon, De-
fendants.

YOU ARE HEREBY DIRECTED TO APPEAR, and answer the complaint in an action entitled as above, brought against you in the Southern Division of the United States District Court for the Northern District of California, Second Division, within ten days after the service on you of this summons—if served within this county; or within thirty days if served elsewhere.

And you are hereby notified that unless you appear and answer as above required, the said plaintiffs will take judgment for any moneys or damages demanded in the complaint, as arising upon contract, or they will apply to the court for any other relief demanded in the complaint.

WITNESS the Honorable WILLIAM C. VAN FLEET, Judge of said District Court, this 30th day of October, in the year of our Lord one thousand nine hundred and eighteen and of our Independence the

one hundred and forty-third.

[Seal]

WALTER B. MALING,
Clerk.

By J. A. Schaertzer,
Deputy Clerk. [10]

United States Marshal's Office,
Northern District of California.

I HEREBY CERTIFY, that I received the within writ on the 30th day of Oct., 1918, and personally served the same on the 31st day of October, 1918, upon Mary J. Dillon, Thos. Dillon, each, by delivering to, and leaving with Mary Dillon, Thos. Dillon, each, said *defendant* named therein personally, at the city of Modesto, county of Stanislaus *County*, in said District, a certified copy thereof, together with a copy of the complaint, attached thereto.

J. B. HOLOHAN,
U. S. Marshal.

By Frank J. Ralph,
Office Deputy.

San Francisco, Nov. 1st, 1918.

[Endorsed]: Filed Nov. 1, 1918. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [11]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

NORVENA LINEKER and FREDERICK V.
LINEKER,

Plaintiffs,

vs.

MARY J. DILLON (Formerly MARY J. TYNAN)
and THOMAS B. DILLON,

Defendants.

Answer.

Come now the defendants Mary J. Dillon (formerly Mary J. Tynan) and Thomas B. Dillon, and answering the complaint of plaintiffs deny and allege as follows, to wit:

I.

Defendants have no information or knowledge sufficient to enable them to answer whether or not Frederick V. Lineker and Norvena Lineker are both citizens of the Dominion of Canada and subjects of George IV, King of England, and aliens, and therefore deny that Frederick V. Lineker and Norvena Lineker, or either of them, are citizens of the Dominion of Canada, and subjects of George IV, King of England, and aliens.

II.

Deny that at all the times mentioned in the complaint Norvena Lineker was of a pliable character and easily persuaded by those in whom she had trust and confidence. Defendants have no informa-

tion as to whether or not she had little or no business experience and was unable to manage and take care of her property, and therefore deny that she had little or no business experience, and deny that she was unable to manage or take care of her property. Deny that she was at all of the times mentioned in the complaint likely to be deceived and imposed upon or imposed upon by artful and designing or artful or designing persons, and deny that this weakness of character and susceptibility to imposition was well known or known at all to defendant, Mary J. Dillon, or to her son, William Winter. Deny that during the time that Norvena Lineker lived at the home [12] of the defendant Mary J. Tynan, in the city and county of San Francisco, or at any other place, or before or after that time, or at all, the plaintiff Norvena Lineker, then Norvena Svenson, imposed implicit confidence and trust or any trust and confidence in the said Mary J. Tynan, or her son, William Winter. Deny that during all of said time or any of said time or at all the defendant Mary J. Dillon and William Winter, or either of them, exercised great or any influence over the plaintiff.

III.

Deny that in the month of June, 1910, or at any other time, or at all, the plaintiff Norvena Lineker, then Norvena Svensen, was engaged to be married to the said William Winter. Deny that at all the times mentioned in the complaint or at any time at all the real estate described in paragraph VIII was of the value of \$35,000 and upward or was of

any value whatever in excess of \$24,000.

IV.

Defendants have no information or knowledge sufficient to enable them to answer whether or not on the 20th day of June, 1910, the plaintiff Norvena Lineker was not in receipt of any income, but was dependent upon moneys given her by her father from time to time for her support, and therefore deny that on the 20th day of June, 1910, or at any other time the plaintiff Norvena Lineker was not in receipt of any income. Defendants deny that since said time she has not been in receipt of any income sufficient for her support, but, on the contrary, allege that she has received large sums of money subsequent to the 20th day of June, 1910, and prior to her marriage with Frederick V. Lineker. Defendants have no information sufficient to enable them to answer whether or not plaintiff Frederick V. Lineker is possessed of practically no means or estate or whether or not plaintiff Norvena Lineker and said Frederick V. Lineker are dependent almost entirely upon the wages earned by Frederick V. Lineker for their support and [13] maintenance, and therefore deny the whole thereof.

V.

Deny that Mary J. Dillon was well acquainted or acquainted at all with plaintiff's financial condition during all of the times mentioned in the complaint or knew that the plaintiff Norvena Lineker was in receipt of no income. Defendants have no information sufficient to enable them to answer whether or not plaintiff has never been possessed of any prop-

erty, means or estate other than set forth in the complaint; and therefore deny that plaintiff Norvena Lineker has never been possessed of any property, means or estate other than as set forth in the complaint.

VI.

Deny that on or about the month of June, 1910, or at any other time at all, Mary J. Dillon conspired or confederated or conspired or confederated with her son, William Winter, to induce plaintiff Norvena Lineker to borrow for the use and benefit or use or benefit of defendant Mary J. Dillon any sums of money at all by pledging her interest in the land described in the complaint as secured therefor, or by any other means. Deny that for that purpose it was agreed between the defendant Mary J. Dillon and William Winter that the said William Winter was to tell plaintiff Norvena Lineker that if she would advance money necessary to make repairs and improvements on said hotel property of defendant Mary J. Dillon, that defendant Mary J. Dillon would put William Winter in charge of said hotel property as manager thereof, or that he would then be in receipt of sufficient income to marry and support plaintiff, Norvena Lineker, or from the receipts of said hotel he and his mother could easily pay off any money that Norvena Svensen would procure for the purpose of making said repairs, alterations and improvements to the hotel property of the said defendant, Mary J. Dillon, and satisfy such debts, or that they would pay off all money so borrowed and satisfy such debt, or that they would save the said

plaintiff harmless from any loss or damage in connection therewith. Deny that the said William Winter in pursuance of the alleged conspiracy and confederation or at all thereafter made such statement and [14] representation or any statement or representation to the said plaintiff, Norvena Lineker. Deny that any such conspiracy existed. Deny that any such statements were made. Deny that Norvena Lineker believed any such statements or representations to be true. Deny that in order to repair, improve and furnish or repair or improve or furnish the hotel property belonging to the *property* Mary J. Dillon for the purpose mentioned in the complaint, or at all, the plaintiff Norvena Lineker did on or about the 20th day of June, 1910, or at any other time or at all, at the request of Mary J. Dillon and the said William Winter or Mary J. Dillon or the said William Winter borrow from Daniel A. McColgan the sum of \$2,850 or any other sum at all, and deny that then and there she made and executed her promissory note for the sum of \$2,850 to the said Daniel A. McColgan for the purpose aforesaid, or for any purpose connected with defendant Mary J. Dillon, and deny that for any such purposes the said plaintiff to secure the payment thereof, did on the 20th day of June, 1910, or at any other time make and execute a trust deed wherein she conveyed all her interest in said real property to one R. McColgan as trustee for Daniel A. McColgan.

VII.

Defendants have no information or knowledge

sufficient to enable them to answer paragraph XIV of the complaint, and therefore deny that at the time of the execution of said note from said Norvena Lineker and said trust deed to R. McColgan, the plaintiff Norvena Lineker was in ill health or weak in body and mind or body or mind to such an extent as to render her unfit to transact business, or that she did not understand or was not at that time capable of understanding that the borrowing of said money would injuriously affect her interest in said real property. Deny that such condition of body and mind of said plaintiff was well known to Mary J. Dillon, or known at all to said Mary J. Dillon, and her son, William Winter, or either of them. [15]

VIII.

Deny that the said William Winter was not a man of any estate or means during any of the times mentioned in the complaint and deny that he was not entitled to credit in any sum whatsoever.

IX.

Defendants have no information sufficient to enable them to answer paragraph XVI of the complaint, and therefore deny that Norvena Lineker received in cash from Daniel A. McColgan on or about the 20th day of June, 1910, the sum of \$2,850 or any sum at all. Deny that upon the receipt of such sum plaintiff, Norvena Lineker, turned over the whole sum of \$2,850 to William Winter for the use and benefit of Mary J. Dillon or for any other purpose at all. Deny that Mary J. Dillon received any part or portion whatever of said sum of \$2,850,

and deny that she spent or expended any part or portion of any sum of money received by William Winter from Norvena Lineker or received by herself from Norvena Lineker. Deny that the whole amount of \$2,850 or any part thereof was received by the defendant, Mary J. Dillon, or was spent or expended at her direction or for her use and benefit in making repairs or additions or alterations on her hotel property, and in furnishing the same or in any other manner or for any other purpose whatever.

X.

Deny that in the month of January, 1911, or at any other time or at all, the repairs, additions and alterations on the hotel property of the defendant, Mary J. Dillon, had been made and completed or made or completed with the money borrowed by Norvena Lineker for the defendant Mary J. Dillon. Deny that within a few days after said repairs had been completed defendant Mary J. Dillon took over complete charge and control of said hotel property and refused thereafter to permit the said William Winter to have the management thereof, or to receive any of the profits or income therefrom, contrary to any agreement that Mary J. Dillon had with either the said William Winter or [16] Norvena A. Lineker, but, on the contrary, defendants allege that no such agreement ever existed, and defendants admit that the said Mary J. Dillon at all times mentioned in the complaint was in charge of said hotel property, and owned the same and conducted the same for her own use and for her own benefit, but she never promised or agreed with William

Winter or with Norvena Lineker that the said William Winter should have complete charge and control of said hotel property or should have any charge or control thereof. Defendants deny that at any time any contemplated marriage between Norvena Svensen and William Winter was broken off.

XI.

Defendants have no information or knowledge sufficient to enable them to answer paragraph XVIII of the complaint and therefore deny that the said Daniel A. McColgan did not cause said deed of trust to be recorded in the office of the County Recorder of Stanislaus County, California, until on or about the 22d day of April, 1911. Deny that on or about the 22d day of April, 1911, he demanded of Norvena Svensen that she forthwith pay to him the amount of said promissory note of \$2,850 with interest thereon, or that he told her that if she failed to do so he would cause her interest in said property to be sold. Deny that immediately or at all after the said Daniel A. McColgan demanded the payment of said note, the plaintiff Norvena Svensen went to see the defendant Mary J. Dillon, and demanded of her that she immediately pay and satisfy said note or procure the satisfaction and cancellation of said deed of trust, or that she, the said plaintiff, then and there, or at all, told defendant that if she failed to pay for said note or satisfy said note forthwith or cause said deed of trust to be satisfied and discharged she, the said plaintiff, would immediately bring action against defendant Mary J. Dillon and her son William Winter to recover the

amount of said note. Deny that thereupon or at all or at any time or place defendant [17] Mary J. Dillon, then Mary J. Tynan, asked or importuned or asked or importuned the said Norvena Lineker, then Norvena Svensen, not to begin or prosecute any action against her the said defendant Mary J. Dillon or her son, William Winter, to recover the alleged money, alleged to have been borrowed on said note from Daniel A. McColgan and secured by said deed of trust. Deny that the defendant Mary J. Dillon (then Mary J. Tynan) did then and there or at any other time or place promise and agree or promise or agree to and with or to or with the said plaintiff, Norvena Lineker (then Norvena Svensen), that if she, the said plaintiff, would refrain from instituting or prosecuting any action against her, the said defendant, and William Winter concerning said money secured by said deed of trust that she, the said defendant Mary J. Dillon (then Mary J. Tynan), would hold and save or hold or save the said plaintiff Norvena Lineker, then Norvena Svensen, harmless from any or all loss or damage by reason of the making of said note or deed of trust; or that she, the said defendant Mary J. Dillon, would cause said debt and interest to be paid and discharged or would procure said deed of trust to be paid or satisfied. Deny that defendant, Mary J. Dillon, promised or agreed that she would indemnify and save harmless or indemnify or save harmless the said Norvena Lineker, then Norvena Svensen, from any loss or damage whatsoever in connection with said note and trust deed or with said note or trust deed.

Deny that the said Norvena Lineker relied upon the alleged promise of defendant. Deny that relying upon said defendant's alleged promise to save her harmless from any or all loss, the plaintiff Norvena Lineker, then Norvena Svensen, refrained from bringing any action to recover said money from said defendant, Mary J. Dillon, then Mary J. Tynan, or her son, William Winter, or either of them. Deny that plaintiff Norvena Lineker has not prosecuted such an action or commenced such an action.

XII.

Defendants have no information sufficient to enable them [18] to answer paragraph XXI of the complaint and therefore deny that thereafter or at all Daniel A. McColgan took various proceedings under said deed of trust for the purpose of obtaining the money secured thereby; and large expenses were incurred in connection therewith. Deny that further expense was thereby incurred. Deny that further expense or attorneys' fees and the like were incurred by the said plaintiff in an endeavor to prevent a sale of said property and a loss thereof to said plaintiff. Deny that thereafter the said Daniel A. McColgan caused said property to be sold under a deed of trust or that various other proceedings were had and taken by and on behalf of said Daniel A. McColgan which resulted in plaintiff, Norvena Svensen, now Norvena Lineker, being deprived of possession of said land and her estate or interest therein, or of the rents, issues or profits thereof to her loss or damage in the sum of \$35,000, or any other sum at all. But, on the contrary this defend-

ant alleges that long prior to the sale of any land under the alleged deed of trust in an action wherein one Williams was plaintiff and Norvena Lineker was defendant, a judgment was procured against the said Norvena Lineker for a sum of money the exact amount of which is unknown to these defendants, and that execution was levied upon the real estate described in the complaint herein and said real estate was sold at public auction pursuant to the statute in such cases made and provided, and a certificate of purchase was duly issued to the purchaser at such sale and more than one year elapsed after said sale and no redemption was made under said judgment, execution or certificate of sale and a deed was thereupon issued and delivered to and recorded by the purchaser and at the date of the sale of said property under said deed of trust the said Norvena Lineker had no right, title, estate, claim or interest in and to said land and premises or any part or portion thereof. [19]

XIII.

Deny that the defendant, Mary J. Dillon, failed and neglected to pay off any indebtedness incurred for her use and benefit or use and benefit or failed or neglected to pay off any obligation incurred by her at all. Deny that by reason of any failure by the defendant, Mary J. Dillon, to keep any promise or agreement made by her to the plaintiffs, or either of them, or Norvena Lineker, they have been damaged in the sum of \$35,000 or any sum at all.

And for another and separate defense to said action, defendants allege:

I.

That long prior to the alleged sale under said deed of trust the said Norvena Lineker parted with all title to said real estate and the whole thereof, and she made, executed and delivered a deed to the whole of said premises to one Frederick V. Lineker and she never thereafter acquired any right, title, estate or interest in and to said land and premises or any part thereof; that at the time of the alleged sale of said property under said deed of trust by the said Daniel A. McColgan neither of the plaintiffs had any right, title, estate or interest therein or to any part or portion thereof; that after the execution of said deed of trust the said Norvena Lineker from time to time procured other advances thereunder until the amount due upon said deed of trust was in excess of the sum of \$7,000.

And as a separate defense to the cause of action set out in plaintiff's complaint and as a bar thereto, the defendant herein alleges as follows, to wit:

I.

That the defendant, Mary J. Dillon, was formerly Mary J. Tynan, and on the 11th day of June, 1912, she was Mary J. Tynan and continued to be Mary J. Tynan for a long time subsequent to the 4th day of August, 1914. [20]

II.

That on the 11th day of June, 1912, she filed with the clerk of the Superior Court of the State of California, in and for the County of Stanislaus, a complaint, which complaint was entitled "In the Superior Court of the County of Stanislaus, State of

California," and this defendant, Mary J. Dillon, was plaintiff in said action, being known therein as Mary J. Tynan, and Norvena E. Lineker was the defendant in said action; that at said time Norvena E. Lineker had not been married and her name was Norvena E. Svensen; that said complaint is in the words and figures following, to wit:

*"In the Superior Court of the County of Stanislaus,
State of California.*

MARY J. TYNAN,

Plaintiff,

vs.

NORVENA E. SVENSEN,

Defendant.

COMPLAINT.

The plaintiff above named complains of the defendant above named and for cause of action alleges:

I.

That at all times herein mentioned said defendant was and now is a resident of the county of Stanislaus, State of California.

II.

That on the 5th day of December, 1911, at Modesto, in the said county of Stanislaus, State of California, defendant made, executed and delivered to plaintiff defendant's certain promissory note in the words and figures following, to wit:

"\$774.65. Modesto, Cal., Dec. 5th, 1911.

One day after date, without grace, for value received, I promise to pay to the order of Mary J.

Tynan, at Modesto, Cal., Seven Hundred Seventy-four and 65/100 Dollars with interest thereon from date until paid, at the rate of eight per [21] cent per annum, said interest to be paid annually, and if not paid as it becomes due to be added to the principal and become a part thereof and bear interest at the same rate; but if default be made in the payment of the interest as above provided, then this note shall become due at the option of the holder thereof; also to pay all legal expenses and attorneys' fees which may be incurred in the collection of this note. All payments which become due by virtue hereof are to be paid in United States Gold Coin.

NORVENA E. SVENSEN."

III.

That said promissory note, or any part thereof, has not been paid and that the same and the whole thereof is now due and unpaid.

IV.

That plaintiff has been compelled to employ attorneys to collect said promissory note that plaintiff has employed the firm of Hatton & Scott, attorneys at law, in said matter; that the sum of \$250 is a reasonable attorney's fee herein.

And for another, further and separate cause of action against the defendant, the plaintiff alleges:

I.

That at the times herein mentioned said defendant was and now is a resident of the county of Stanislaus, State of California.

That defendant is indebted to plaintiff in the sum

of one hundred forty (140) dollars for board and room furnished by plaintiff to defendant at defendant's special instance and request; that said board and room were so furnished by plaintiff to defendant within two years immediately preceding the commencement of this action.

III.

That said sum of one hundred forty (140) dollars or any part thereof has not been paid and that the same and the whole thereof is now due and unpaid.
[22]

And for another, further and separate cause of action against defendant, plaintiff alleges:

I.

That at all the times herein mentioned the defendant was and now is a resident of the county of Stanislaus, State of California.

II.

That defendant is indebted to the plaintiff in the sum of seventy-five (75) dollars for moneys paid by plaintiff to defendant for the use of the defendant at the special instance and request of defendant; that said sum of seventy-five (75) dollars was so paid by plaintiff to defendant and to and for the use of defendant within two years immediately preceding the commencement of this action.

III.

That said sum of seventy-five (75) dollars or any part thereof has not been paid and that the same and the whole thereof is now due and unpaid.

WHEREFORE, plaintiff prays judgment against said defendant for the sum of seven hundred four

and 65/100 (774.65) dollars, together with interest thereon at the rate of eight per cent per annum from the 5th day of December, 1911, and for the further sum of one hundred forty (150) dollars for board and room as aforesaid, and the further sum of seventy-five (75) dollars for money advanced and paid to defendant and to and for the use of defendant by plaintiff as aforesaid, and for the sum of two hundred fifty (250) dollars attorney's fee as above set forth and for costs of suit herein.

HATTON & SCOTT,
Attorneys for Plaintiff. [23]

State of California,
County of Stanislaus,—ss.

Mary J. Tynan, being duly sworn, deposes and says: That she is the plaintiff in the above-entitled action; that she has read the above and foregoing complaint and knows the contents thereof; that the same is true of her own knowledge, except as to the matters therein stated on her information and belief and as to these matters that she believes it to be true.

MARY J. TYNAN.

Subscribed and sworn to before me this 10th day of June, 1912.

[Notarial Seal] W. H. HATTON,
Notary Public in and for the County of Stanislaus,
State of California.

III.

That thereafter and on the 11th day of May, 1914, the said defendant, Norvena E. Svensen, filed with

the clerk of said court her answer to the complaint, which answer was in the words and figures following, to wit:

*“In the Superior Court of the County of Stanislaus,
State of California.*

No. 3666.

MARY J. TYNAN,

Plaintiff,

vs.

NORVENA E. SVENSEN,

Defendant.

Comes now the defendant above named and answering the complaint of plaintiff on file herein alleges, admits and denies as follows:

I.

As to paragraph III of said complaint the said defendant denies that said note has not been paid, or any part thereof, either principal or interest, but alleges on the contrary that the said plaintiff is indebted to this defendant in the sum of [24] \$4,000 for money loaned, paid out and expended for and on account of the said plaintiff at her special instance and request, which amount has not yet been paid.

II.

Denies that \$250 is a reasonable attorney's fee or that any sum at all is a reasonable attorney's fee or that the said plaintiff is entitled to attorneys' fees at all.

And further answering the said complaint and by way of counterclaim the said defendant alleges:

I.

That the said plaintiff is indebted to the said defendant in the sum of \$4,000.00 for money advanced, paid out and expended for and on account of said plaintiff at her special instance and request, which amount said plaintiff has not paid.

II.

That said defendant alleges that the said Mary J. Tynan and William Winter were partners managing a certain building in the city of Modesto, known as the Tynan Hotel, and that while the said William Winter was acting as agent and manager for the said plaintiff he obtained from this defendant a sum in excess of \$4,000 with the knowledge and consent of said plaintiff, and that said amount was expended in improving, renovating and repairing the said Tynan Hotel, and that said Tynan Hotel belongs now and at said time did belong to the said Mary J. Tynan, and that the money was expended for her benefit and for her account, and was received by her, and that she has not paid the same, or any part thereof.

III.

That the said defendant alleges that since the filing of said complaint that she has married and her name is now Norvena E. Lineker.

WHEREFORE, said defendant prays that the said plaintiff take nothing by this said action, and that the said defendant have judgment against her for the sum of \$4,000, together with [25] interest

thereon at the rate of seven per cent from the 20th day of June, 1910, and for costs of suit.

L. L. DENNETT,
Attorney for Defendant.

State of California,
County of Alameda,—ss.

Norvena E. Lineker, formerly Norvena E. Svensen, being duly sworn, deposes and says: That she is the defendant in the above-entitled answer; that she has read the same and knows the contents thereof and the same is true of her own knowledge, except as to those matters therein stated on information and belief and as to those that she believes it to be true.

NORVENA E. LINEKER.

Subscribed and sworn to before me this 9th day of May, 1914.

[Notarial Seal] M. D. NICHOLS,
Notary Public in and for the County of Alameda,
State of California.

IV.

That thereafter on the 25th day of July, 1914, and by consent of the parties to said action the plaintiff filed a supplement to the complaint, which supplement is in the words and figures following, to wit:

*“In the Superior Court of the County of Stanislaus,
State of California.*

MARY J. TYNAN,

Plaintiff,

vs.

NORVENA E. LINEKER, Formerly NORVENA
E. SVENSEN,

Defendant.

SUPPLEMENT TO COMPLAINT.

Prior to the trial of the above-entitled cause, it was stipulated and agreed by the parties hereto, in open court, that the plaintiff file a supplement to the complaint in said [26] action, which said complaint was filed in the above-entitled Superior Court on the 11th day of June, 1912, and that said supplement to said complaint be considered as filed prior to the said trial of said cause and that the facts alleged in said supplement be admitted by the defendant, and that said supplement be as follows, to wit:

To the first cause of action set forth in said complaint: That subsequent to said 5th day of December, 1911, and subsequent to the filing of the complaint herein on the 11th day of June, 1912, the said defendant married and that defendant's name is now Norvena E. Lineker.

To the second cause of action set forth in said complaint:

That subsequent to the 5th day of December, 1911, and subsequent to the filing of the complaint herein

on the 11th day of June, 1912, the said defendant married and that defendant's name is now Norvena E. Lineker.

To the third cause of action set forth in said complaint:

That subsequent to the 5th day of December, 1911, and subsequent to the filing of the complaint herein on the 11th day of June, 1912, the said defendant married and that defendant's name is now Norvena E. Lineker.

It was further stipulated and agreed in open court by said parties prior to the trial of said action, that in all matters or proceedings in said cause subsequent to said stipulation that the said defendant should be named and designated as Norvena E. Lineker, formerly Norvena E. Svensen.

HATTON & SCOTT,
Attorneys for Plaintiff. [27]

State of California,
County of Stanislaus,—ss.

Mary J. Tynan, being duly sworn, deposes and says: That she is the plaintiff in the above-entitled action; that she has read the above and foregoing supplement to the complaint herein and knows the contents thereof; that the same is true of her own knowledge, except as to the matters therein stated on her information and belief and as to these matters that she believes it to be true.

MARY J. TYNAN.

Subscribed and sworn to before me this 25th day of July, 1914.

[Notarial Seal]

T. B. SCOTT,

Notary Public in and for the County of Stanislaus,
State of California.”

That said supplement to said complaint was duly served upon L. L. Dennett on the 25th day of July, 1914, and at said time L. L. Dennett was the attorney for Norvena E. Lineker.

V.

That a trial was had upon the issues formed by said complaint and the answer aforesaid on the 24th day of July, 1914, and evidence was taken at said trial. Whereupon the Court made and entered its findings of fact on the 4th day of August, 1914, which said findings of fact are in words and figures following, to wit:

*“In the Superior Court of the County of Stanislaus,
State of California.*

No. 3666.

MARY J. TYNAN,

Plaintiff,

vs.

NORVENA E. LINEKER, Formerly NORVENA
E. SVENSEN,

Defendant.

FINDINGS.

This cause came on regularly for trial on the 24th [28] day of July, 1914, before the Court, Hon. L. W. Fulkerth, Judge presiding. A jury was waived

by the parties hereto and the cause was tried before the Court sitting without a jury. Evidence, oral and documentary, was introduced by the various parties, and the Court now being fully advised in the premises, renders this decision in writing and finds from the evidence the following facts:

FINDINGS OF FACT.

I.

That at all the times herein mentioned in the complaint filed herein said defendant was a resident of the County of Stanislaus, State of California.

II.

That subsequent to the 5th day of December, 1911, and subsequent to the filing of the complaint in this action on the 11th day of June, 1912, the said defendant, Norvena E. Svensen, married and that the name of defendant at said trial of this cause was and now is Norvena E. Lineker.

III.

That prior to the said trial of said cause it was stipulated and agreed by the parties hereto, in open court, on said 24th day of July, 1914, that in all matters or proceedings in said cause subsequent to the aforesaid stipulation, the defendant should be named and designated as Norvena E. Lineker, formerly Norvena E. Svensen.

IV.

That on the 5th day of December, 1911, at Modesto, in said county of Stanislaus, State of California, defendant made, executed and delivered to plaintiff defendant's certain promissory note in the words and figures following, to wit:

\$774.65.

Modesto, Cal., Dec. 5th, 1911.

One day after date, without grace, for value received, I promise to pay to the order of Mary J. Tynan, at Modesto, Cal., Seven Hundred Seventy-four and 65/100 Dollars, with interest [29] thereon from date until paid, at the rate of eight per cent per annum, said interest to be paid annually, and if not paid as it becomes due to be added to the principal and become a part thereof, and bear interest at the same rate, but if default be made in the payment of the interest as above provided, then this note shall become due at the option of the holder thereof; also to pay all legal expenses and attorneys' fees which may be incurred in the collection of this note. All payments which become due by virtue hereof are to be paid in United States Gold Coin.

NORVENA E. SVENSEN.

V.

That said promissory note, or any part thereof, has not been paid and that the same and the whole thereof, is now due and unpaid.

VI.

That plaintiff has been compelled to employ attorneys to collect said promissory note and has thereby incurred attorney's fee for the collection of the same; that plaintiff has employed the firm of Hatton & Scott, attorneys at law, in said matter; that the sum of \$100 is a reasonable attorney's fee herein.

VII.

The defendant is indebted to the plaintiff in the

sum of one hundred forty (140) dollars for board and room furnished by plaintiff to defendant at defendant's special instance and request; that said board and room were so furnished by plaintiff to defendant within two years immediately preceding the commencement of this action.

VIII.

That said sum of one hundred forty (140) dollars or any part thereof has not been paid, and that the same and the whole thereof is now due and unpaid.

IX.

That defendant is indebted to plaintiff in the sum of [30] seventy-five (75) dollars for moneys paid by plaintiff to defendant and for the use of defendant at the special instance and request of defendant; that said sum of seventy-five (75) dollars was so paid by plaintiff to defendant to and for the use of the defendant within two years immediately preceding the commencement of this action.

X.

That said sum of seventy-five (75) dollars or any part thereof has not been paid and that the same and the whole thereof is now due and unpaid.

XI.

That plaintiff is not indebted to defendant in the sum of four thousand (4,000) dollars, or in any sum or amount whatever.

XII.

That plaintiff and one William Winter were not at any time partners in the management of the Tynan Hotel; that said William Winters was not agent or manager for plaintiff in managing or con-

ducting said Tynan Hotel; that William Winters did not obtain from said defendant any moneys whatever as agent or manager for plaintiff; that said William Winters did not obtain from defendant any money or moneys whatever with the knowledge or consent of plaintiff or by or under the authority of plaintiff; that there was not expended in the improving or renovating or repairing the said Tynan Hotel, or for the benefit of plaintiff or for the account of plaintiff or received by plaintiff any money or moneys whatever obtained from defendant; that said Tynan Hotel now belongs to and at all times mentioned in the pleadings herein did belong to the said plaintiff, Mary J. Tynan.

CONCLUSIONS OF LAW.

I.

That plaintiff is not indebted to defendant in any sum or amount whatever. [31]

II.

That defendant is indebted to plaintiff and that plaintiff have judgment against defendant in the following amounts, to wit: In the sum of seven hundred seventy-four and $65/100$ (774.65) dollars, with interest thereon from the 5th day of December, 1911, at the rate of eight per cent per annum; in the further sum of one hundred (100) dollars, attorney's fees allowed by the court; in the further sum of one hundred forty (140) dollars; in the further sum of seventy-five (75) dollars.

III.

That the total amount of indebtedness due from the defendant to plaintiff on the 24th day of July,

1914, was and is the sum of one thousand two hundred sixty-four and 9/100 (1264.91) dollars.

That plaintiff have judgment for said sum of \$1,264.91 and her costs herein.

Let judgment be entered accordingly.

L. W. FULKERTH,

Judge of the Superior Court.

Dated August 4th, 1914.

VI.

That said findings were duly filed with the clerk of said Court on August 4th, 1914, and entered on said date.

VII.

That thereafter and on the 4th day of August, 1914, L. W. Fulkerth, Judge of said Superior Court in said cause, duly made judgment, which said judgment is in the words and figures following, to wit:

*“In the Superior Court of the County of Stanislaus,
State of California.*

No. 3666.

MARY J. TYNAN,

Plaintiff,

vs.

NORVENA E. LINEKER, Formerly 'NORVENA
E. SVENSON,

Defendant.

This cause came on for trial on the 24th day of July, A. D. 1914, Messrs. Hatton & Scott, appearing as counsel for plaintiff and L. L. Dennett, Esq., appearing for defendant. [32] A trial by jury hav-

ing been waived, it was tried before the Court. Whereupon witnesses on the part of plaintiff and defendant were sworn and examined and documentary evidence introduced by the respective parties, the defense being closed, the cause was submitted to the Court for consideration and decision and after deliberation thereon the Court filed its findings and decisions in writing and ordered that judgment be entered herein in favor of plaintiff in accordance therewith.

WHEREFORE, by reason of the law and the findings aforesaid, it is ordered, adjudged and decreed that Mary J. Tynan, the plaintiff, do have and recover of and from Norvena E. Lineker, formerly Norvena E. Svensen, the defendant, the sum of one thousand *and* two hundred and sixty-four and 91/100 (1264.91) dollars, with interest thereon at the rate of seven per cent per annum from date hereof until paid, together with said plaintiff's costs and disbursements incurred in this action amounting to the sum of \$15.

Judgment recorded August 4th, A. D. 1914.

L. W. FULKERTH,

Judge of the Superior Court."

That said judgment was filed in the office of the clerk of said court on the 4th day of August, 1914, and was recorded in Judgment Book V at page 33, records of the Superior Court of the State of California, in and for the county of Stanislaus. That thereupon a judgment-roll was duly made and entered on the 4th day of August, 1914.

VIII.

That said judgment has never been appealed from, vacated, annulled, or set aside or modified and said judgment is now in full force and effect and no part thereof has been paid and the whole of said judgment is now due, owing and unpaid from the said Norvena E. Lineker, formerly Norvena E. Svensen, to the said Mary J. Tynan, who is now named Mary J. Dillon.

And as another and further defense to said action and as [33] a bar to the cause of action set forth in the complaint or petition of the plaintiff, the defendant Mary J. Dillon alleges as follows:

I.

That on the 28th day of March, 1913, Mary J. Tynan, now Mary J. Dillon, filed in the office of the county clerk of the county of Stanislaus, State of California, a complaint wherein the said Mary J. Tynan was plaintiff and Norvena E. Lineker was defendant, which said complaint was entitled, "In the Superior Court of the County of Stanislaus, State of California. Mary J. Tynan, Plaintiff, vs. Norvena E. Lineker, Formerly Norvena E. Svensen, Defendant," and which complaint was in the words and figures following, to wit:

fees which may be incurred in the collection of this note. All payments which become due by virtue hereof are to be paid in United States Gold Coin.

NORVENA E. SVENSEN.”

II.

That by the terms of said promissory note said note is payable at Modesto, County of Stanislaus, State of California.

III.

That said promissory note, or any part thereof, has not been paid and that the same and the whole thereof is now due and unpaid.

IV.

That plaintiff is the lawful owner and holder of said promissory note.

V.

That subsequent to said January 22d, 1912, the said defendant married and that defendant's name is now Norvena E. Lineker.

VI.

That plaintiff has been compelled to employ attorneys for the payment of said promissory note and has thereby incurred attorney's fee; that the sum of one hundred dollars is a reasonable attorney's fee herein.

WHEREFORE, plaintiff prays judgment against said defendant for the sum of \$303.52, with interest thereon at the rate of seven per cent per annum from January 22d, 1912, and for the sum of one hundred dollars, attorney's fee herein and for costs of suit.

HATTON & SCOTT,

Attorneys for Plaintiff. [35]

State of California,
County of Stanislaus,—ss.

Mary J. Tynan, being first duly sworn, deposes and says:

That she is the plaintiff in the above-entitled action; that she has heard read the above and foregoing complaint and knows the contents thereof; that the same is true of her own knowledge, except as to the matters therein stated on her information and belief and as to these matters that she believes it to be true.

MARY J. TYNAN.

Subscribed and sworn to before me this 28th day of March, 1913.

[Notarial Seal] T. B. SCOTT,
Notary Public in and for the County of Stanislaus,
State of California."

II.

That thereafter on May 11th, 1914, the defendant in said action, to wit, Norvena E. Lineker, formerly Norvena E. Svensen, filed with the clerk of said court her answer and counterclaim in said action, which said answer and counterclaim is in the words and figures following, to wit:

*“In the Superior Court of the County of Stanislaus,
State of California.*

MARY J. TYNAN,

Plaintiff,

vs.

NORVENA E. LINEKER, Formerly NORVENA
E. SVENSEN,

Defendant.

Comes now the defendant above named and answering the complaint of the plaintiff on file herein admits, alleges and denies as follows:

I.

Admits that on or about the 22d day of January, [36] 1912, she made, executed and delivered to said plaintiff her promissory note for \$303.52, but alleges that said note was given to the said plaintiff merely for the purpose of record of a transaction under and by which the said plaintiff became indebted to the said defendant; and the said defendant alleges that on or about the 28th day of January, 1910, she paid to and on account of the said Mary J. Tynan the sum of \$4,000, and that the said amount has not been repaid by the said plaintiff, or any part thereof; and this defendant further alleges that she borrowed said sum of money; as aforesaid, to be paid to and for account of said plaintiff; and gave her promissory note therefor to one Daniel A. McColgan and Robert McColgan, and that the said promissory note sued for in this complaint, or a portion thereof, was on

account of interest paid in advance on account of said McColgan loan.

II.

That the said defendant denies that said note has not been paid, or any part thereof; but on the contrary alleges that it has been paid by reason of said indebtedness and that the said plaintiff is indebted to this defendant over and above the amount of said note.

III.

As to paragraph VI of said complaint this defendant denies that \$100 or any amount is a reasonable attorney's fee and denies that any attorney's fee is provided for in said note, or that said plaintiff is entitled to any attorney's fee. And further answering said complaint and by way of counterclaim the said defendant alleges:

I.

That the said plaintiff is indebted to her in the sum of \$4,000 for money paid out and advanced to and on account of the said plaintiff within two years prior to the filing of said complaint herein, and said defendant alleges that said amount has not been paid, or any part thereof, but the same [37] is still due, owing and unpaid from the said plaintiff to said defendant.

WHEREFORE, the said defendant prays that the said plaintiff take nothing by her said action and that she have judgment against the said plaintiff for the said sum of \$4,000, together with interest thereon at the rate of seven per cent per annum from the 20th

day of June, 1910, and for costs of suit.

L. L. DENNETT,
Attorney for Defendant.

State of California,
County of Alameda,—ss.

Norvena E. Lineker, being duly sworn, deposes and says:

That she is the defendant in the above and foregoing answer; that she has read the same and knows the contents thereof and that the same is true of her own knowledge, except as to those matters therein stated on information and belief, and as to those matters she believes it to be true.

NORVENA E. LINEKER.

Subscribed and sworn to before me this 9th day of May, 1914.

[Notarial Seal] M. D. NICHOLS,
Notary Public in and for the County of Alameda,
State of California.”

III.

That thereafter on the 24th day of July, 1914, the said action came on regularly for trial upon the complaint of the plaintiff and the answer of the defendant, and Messrs. Hatton & Scott, Esqs., appeared as counsel for the plaintiff, Mary J. Tynan, and L. L. Dennett, Esq., appeared as counsel for the defendant, Norvena E. Lineker, and it was thereupon stipulated [38] in open court in the presence of said Mary J. Tynan and Norvena E. Lineker and by the said Mary J. Tynan and Norvena E. Lineker that judgment be for the plaintiff for the principal amount of said note, together with interest

and costs and that the plaintiff waived attorney's fee, and it was stipulated and agreed in open court by and between the parties that the plaintiff, Mary J. Tynan, was not indebted to the defendant, Norvena E. Lineker, in any sum or amount whatever. Whereupon L. W. Fulkerth, as Judge of said Superior Court, did make and enter Findings of Fact in said cause, which said findings of fact are in the words and figures following, to wit:

*“In the Superior Court of the County of Stanislaus,
State of California.*

No. 3910.

MARY J. TYNAN,

Plaintiff,

vs.

NORVENA E. LINEKER, Formerly NORVENA
E. SVENSEN,

Defendant.

FINDINGS.

This cause came on regularly for trial on the 24th day of July, 1914, before the Court, Hon. L. W. Fulkerth, Judge presiding. A jury was waived by the parties hereto and the cause came on for trial before the court without a jury. It was stipulated by and between the parties to said cause in open court, that plaintiff have judgment for the amount sued on herein, to wit, the sum of three hundred three and 52/100 (\$303.52) dollars, with interest thereon from the 22d day of January, 1912, at the rate of seven per

cent per annum, amounting on the said 24th day of July, 1914, to the sum of three hundred fifty-nine and 84/100 (359.84) dollars and for plaintiff's costs herein. [39]

It was stipulated and agreed that plaintiff is not indebted to defendant in any sum or amount whatever.

Let judgment be entered accordingly.

L. W. FULKERTH,
Judge of the Superior Court.

Dated August 4th, 1914."

IV.

That thereafter and on the 4th day of August, 1914, the Judge of said court duly made and caused to be entered a judgment in said action, which judgment is in the words and figures following, to wit:

*"In the Superior Court of the County of Stanislaus,
State of California.*

No. 3910.

MARY J. TYNAN,

Plaintiff,

vs.

NORVENA E. LINEKER, Formerly NORVENA
E. SVENSEN,

Defendant.

JUDGMENT BY THE COURT.

This cause came on for trial on the 24th day of July, 1914, Messrs. Hatton & Scott appearing as counsel for plaintiff and L. L. Dennett, Esq., appearing as counsel for the defendant, a trial by jury hav-

ing been waived it was tried before the Court. It was stipulated by and between the parties to said cause, in open court, that plaintiff Mary J. Tynan have judgment against the defendant Norvena W. Lineker, formerly Norvena E. Svensen, for the sum of three hundred fifty-nine and $84/100$ (359.84) dollars, and for plaintiff's costs herein, and the court files its findings and decision in writing and orders that judgment be entered herein in favor of plaintiff in accordance with said stipulation.

WHEREFORE, by reason of the law and the stipulation and findings as aforesaid, it is ordered, adjudged and decreed that Mary J. Tynan, the plaintiff, have and recover of and from Norvena E. Lineker, formerly Norvena E. Svensen, the defendant, [40] the sum of three hundred fifty-nine and $84/100$ (359.84) dollars, with interest thereon at the rate of seven per cent per annum from the date hereof until paid, together with said plaintiff's costs and disbursements incurred in this action amounting to the sum of (10) *dollars*.

Judgment recorded August 4th, 1914.

L. W. FULKERTH,
Judge of the Superior Court.
V.

That said judgment was filed with the clerk of said court on the 4th day of August, 1914, and was thereupon recorded in Judgment Book, Volume 8, page 34, and was docketed on said 4th day of August, 1914, and on said 4th day of August, 1914, said judgment-roll was duly made up, filed and entered and said judgment has not been appealed from, vacated or set

aside and is now in full force and effect, and said judgment has not been paid and no part of said judgment has been paid.

WHEREFORE, defendants pray that they be hence dismissed with their costs of suit.

HAWKINS & HAWKINS,
Attorneys for Defendants.

State of California,
County of Stanislaus,—ss.

Mary J. Dillon, being first duly sworn, deposes and says:

That she is one of the defendants named in the above-entitled action; that she has read the foregoing answer to the complaint and knows the contents thereof and the same is true of her own knowledge, except as to matters therein stated on information and belief and as to such matters she believes it to be true.

MARY J. DILLON.

Subscribed and sworn to before me this 14th day of November, 1918.

[Seal] J. W. HAWKINS,
Notary Public in and for the County of Stanislaus,
State of California. [41]

Received copy hereof this second day of December, 1918.

J. L. TAUGHER,
Attorney for Plaintiff.

[Endorsed]: Filed Dec. 3, 1918. W. B. Maling,
Clerk. By J. A. Schaertzer, Clerk. [42]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

No. 16,195.

NORVENA LINEKER and FREDERICK V.
LINEKER,

Plaintiffs,

vs.

MARY J. DILLON, etc., and THOMAS B.
DILLON,

Defendants.

Verdict.

We, the jury, find in favor of the plaintiffs and assess the damages against the defendants in the sum of 32,000—Thirty-two Thousand and no/100 Dollars.

J. S. ANDREWS,
Foreman.

[Endorsed]: Filed Oct. 3, 1919. Walter B. Mal-
ing, Clerk. [43]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

No. 16,195.

NORVENA LINEKER and FREDERICK V.
LINEKER,

Plaintiffs,

vs.

MARY J. DILLON (Formerly MARY J. TYNAN)
and THOMAS B. DILLON,

Defendants.

Judgment on Verdict.

This cause having come on regularly for trial upon the 1st day of October, 1919, being a day in the July, 1919, Term of said court, before the Court and a jury of twelve men duly impaneled and sworn to try the issue joined herein; John L. Taugher, Esq., appearing as attorney for plaintiffs, and J. W. Hawkins, Esq., appearing as attorney for defendants; and the trial having been proceeded with on the second and third days of October, all in said year and term, and oral and documentary evidence upon behalf of the respective parties having been introduced and closed and the cause, after arguments by the attorneys and the instructions of the Court, having been submitted to the jury, and the jury having subsequently rendered the following verdict which was ordered recorded, namely: "We, the jury, find in favor of the plaintiffs and assess the damages

against the defendants in the sum of 32,000—Thirty-two thousand and no/100 Dollars. J. S. Andrews, Foreman," and the Court having ordered that judgment be entered in accordance with said verdict and for costs:

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that Norvena Lineker and Frederick V. Lineker, plaintiffs, do have and recover of and from Mary J. Dillon (formerly Mary J. Tynan) and Thomas B. Dillon, defendants, the sum of Thirty-two thousand and no/100 dollars (\$32,000.00), together with their costs herein expended taxed at \$131.75.

Judgment entered October 3, 1919.

WALTER B. MALING,

Clerk. [44]

A true copy. Attest:

[Seal]

WALTER B. MALING,

Clerk.

[Endorsed]: Filed Oct. 3, 1919. W. B. Maling,
Clerk. [45]

In the Southern Division of the United States District Court for the Northern District of California.

No. 16,195.

NORVENA LINEKER et al.

vs.

MARY J. DILLON, etc., et al.,

(Clerk's Certificate to Judgment-roll.)

I, Walter B. Maling, clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing papers hereto annexed constitute the Judgment-roll in the above-entitled action.

ATTEST my hand and the seal of said District Court, this 3d day of October, 1919.

[Seal]

WALTER B. MALING,
Clerk.

By J. A. Schaertzer,
Deputy Clerk.

[Endorsed]: Filed October 3d, 1919. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[46]

At a stated term, to wit, the November term, A. D. 1920, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom in the City and County of San Francisco, on Monday, the 5th day of January, in the year of our Lord one thousand nine hundred and twenty. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 16,195.

NORVENA LINEKER et al.

vs.

MARY J. DILLON et al.

(Order Modifying Judgment, etc.)

Defendants' petition for a new trial, heretofore submitted, being now fully considered and the Court having rendered its oral opinion, it is ordered that the judgment be modified so that it shall be satisfied out of the separate property of Mary J. Dillon and the community property of Mary J. Dillon and Thomas B. Dillon; and it is further ordered that the petition for a new trial be granted unless the plaintiffs, within ten days, consent to a remission of the sum of \$4,000.00 from the amount of the judgment, so that the amount of the judgment be in the sum of \$28,000.00, and for costs; to which decision the defendants excepted. And thereupon the plaintiffs in open court, by their attorney, duly consented to the reduction of the judgment herein in the sum of \$4,000.00. And such remission having been accepted by the Court it was thereupon ordered that the petition for a new trial be and the same is hereby denied. It is ordered that judgment be entered accordingly as of date of verdict. [47]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

No. 16,195.

NORVENA LINEKER and FREDERICK V.
LINEKER,

Plaintiffs,

vs.

MARY J. DILLON (Formerly MARY J. TYNAN)
and THOMAS B. DILLON,

Defendants.

Judgment.

In this cause the defendants having filed a petition for a new trial and after full consideration thereof, the Court having ordered that the judgment be modified so that it shall be satisfied out of the separate property of Mary J. Dillon and the community property of Mary J. Dillon and Thomas B. Dillon and the Court having ordered that the petition for a new trial be granted unless the plaintiffs consent to a remission in the sum of \$4,000.00 from the amount of the verdict; and the plaintiffs having consented to such remission; and the Court having thereupon ordered that judgment be entered accordingly as of date October 3, 1919, and for costs:

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that Norvena Lineker and Frederick V. Lineker, plaintiffs, do have and recover of and from

Mary J. Dillon (formerly Mary J. Tynan) and Thomas B. Dillon, defendants, the sum of twenty-eight thousand and no/100 (\$28,000.00) dollars, together with their costs herein expended taxed at \$——; and that said judgment be satisfied out of the separate property of Mary J. Dillon and the community property of Mary J. Dillon and Thomas B. Dillon.

Judgment entered January 5, 1920, *nunc pro tunc* October 3, 1919.

WALTER B. MALING,
Clerk.

A true copy.

[Seal] Attest: WALTER B. MALING,
Clerk.

[Endorsed]: Filed January 5, 1920, *nunc pro tunc* October 3, 1919. Walter B. Maling, Clerk. [48]

In the Southern Division of the United States District Court for the Northern District of California.

No. 16,195.

NORVENA LINEKER et al.

vs.

MARY J. DILLON, etc., et al.

(Clerk's Certificate to Judgment-roll.)

I, Walter B. Maling, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing papers

hereto annexed constitute the judgment-roll in the above-entitled action.

ATTEST my hand and the seal of said District Court, this 5th day of January, 1920.

[Seal]

WALTER B. MALING,
Clerk.

[Endorsed]: Filed January 5, 1920, *nunc pro tunc* October 3, 1919. Walter B. Maling, Clerk. [49]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

NORVENA LINEKER and FREDERICK V. LINEKER,

Plaintiffs,

vs.

MARY J. DILLON (Formerly MARY J. TYNAN)
and THOMAS B. DILLON,

Defendants.

Demurrer.

Come now the defendants above named and demur to the complaint of the plaintiffs on file herein and for grounds of demurrer allege:

I.

That said complaint does not state facts sufficient to constitute a cause of action against the defendants or either of them.

II.

That there is a misjoinder of parties defendant,

to wit, Mary J. Dillon and Thomas B. Dillon, in that it appears from said complaint that Thomas B. Dillon is not a necessary or proper party defendant.

III.

That said complaint is uncertain in that it cannot be ascertained therefrom at what date the defendant, Mary J. Dillon, refused to permit William Winter to have the management or control of the Tynan Hotel in the city of Modesto, Stanislaus County, California, or when the contemplated marriage between the said Norvena Svensen, plaintiff named herein as Norvena Lineker, and William Winter was broken off. Nor can it be ascertained therefrom whether the defendant, Mary J. Dillon, promised and agreed in writing or orally to the effect that if plaintiff, Norvena Lineker, would refrain from instituting or prosecuting any action against her, she the said defendant, Mary J. Dillon, would hold and save the plaintiff, Norvena Lineker, harmless from [50] any loss or damage by reason of the making of the note mentioned in the complaint or the deed of trust. Nor can it be ascertained whether the said Mary J. Dillon in writing promised and agreed that she would cause said debt and interest to be discharged and paid and would procure the deed of trust mentioned in the complaint to be paid and satisfied. Nor can it be ascertained from said complaint whether the defendant Mary J. Dillon in writing or orally promised that she would indemnify and save harmless the said Norvena Lineker from any loss or damage whatsoever in connection with the note and deed of trust mentioned in the complaint.

Nor can it be ascertained when the property mentioned in the complaint and in the deed of trust was sold under the terms of said deed of trust or to whom said property was sold. Nor can it be ascertained from said complaint whether the said Norvena Lineker continued to be the owner of the land described in the complaint up to the date of the alleged sale under the deed of trust. Nor can it be ascertained therefrom what part of the alleged \$30,000 damage was incurred by loss of rents and what part thereof consisted of profits from the land described in the complaint. Nor can it be ascertained therefrom what part of the alleged damage of \$30,000 was incurred for adjournments of the sale of the property or what part thereof was for attorneys' fees and what part thereof was incurred by said plaintiff in an endeavor to prevent a sale of the property and the loss thereof. Nor can it be ascertained therefrom what part of said damage of \$30,000 was incurred by reason of the loss of the land, by reason of the sale under the deed of trust. Nor can it be ascertained what other various proceedings were taken by and on behalf of Daniel A. McColgan which resulted in the plaintiff Norvena Lineker being deprived of the possession of the land and her interest therein. Nor can it be ascertained when Mary J. Dillon agreed to hold and save harmless the plaintiff, Norvena Lineker, from any or all loss or damage by reason of the making of said note and deed of trust. [51]

IV.

That said complaint is unintelligible for the rea-

sons set forth in paragraph III of this demurrer.

V.

That said complaint is ambiguous for the reasons set forth in paragraph III of this demurrer.

VI.

That the cause of action attempted to be set forth in the complaint of plaintiffs is barred by subdivision 1 of section 337 of the Code of Civil Procedure of the State of California.

VII.

That the cause of action set forth in the complaint of plaintiffs is barred by subdivision 1 of section 338 of the Code of Civil Procedure of the State of California.

VIII.

That the cause of action set forth in the complaint of plaintiffs is barred by subdivision 4 of section 338 of the Code of Civil Procedure of the State of California.

IX.

That the cause of action set forth in plaintiffs' complaint is barred by subdivision 1 of section 339 of the Code of Civil Procedure of the State of California.

WHEREFORE, the defendants pray that they be hence dismissed with their costs of suit.

HAWKINS & HAWKINS,

Attorneys for Defendants.

[Endorsed]: Filed Nov. 7, 1918. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [52]

(Docket Entries.)

United States District Court.

Docket 16,195.

Title of Case.

NORVENA LINEKER et al.

vs.

MARY J. DILLON, etc., et al.

Attorneys.

John L. Taugher.

For money under contract of indemnity.

Hawkins & Hawkins—Modesto, Cal.

Date

Month Day Year.

Oct. 30, 1918. Filed complaint. Filed praecipe.

Issued summons and 2 copies.

Nov.	1,	“	Filed summons.
“	7,	“	Filed demurrer.
“	11,	“	Ord. dem. con. to 18.
“	18,	“	Ord. dem. con. to 25.
Dec.	2,	“	Ord. dem. con. to 9.
“	3,	“	Filed answer.
“	9,	“	Ord. dem. con. to 16.
“	16,	“	Ord. dem. con. to 23.
“	23,	“	Ord. dem. con. to 30.
“	30,	“	Ord. demurrer dropped.

* * * * *

In the Southern Division of the United States District Court in and for the Northern District of California, Second Division.

No. 16,195.

NORVENA LINEKER and FREDERICK V.
LINEKER,

Plaintiffs,

vs.

MARY J. DILLON (Formerly MARY J. TYNAN)
and THOMAS B. DILLON,

Defendants.

Petition for Writ of Error.

To the Honorable WILLIAM C. VAN FLEET, District Judge:

The above-named defendants, Mary J. Dillon, formerly Mary J. Tynan, and Thomas B. Dillon, feeling themselves aggrieved by the judgment in the above-entitled cause made and entered on October 3, 1919, and thereafter modified on motion for a new trial on January 5, 1920, now come by their attorney and petition said Court for an order allowing themselves, the said defendants, and each of them, to prosecute a writ of error to the Honorable the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided.

And your said petitioners further state that a *supersedeas* is not desired herein, and that they further pray that the proper order relating to the secur-

ity for costs to be required of them be made.

SAMUEL M. SHORTRIDGE,

Attorney for Defendants and Plaintiffs in Error.

[Endorsed]: Filed Feb. 9, 1920. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [54]

*In the Southern Division of the United States Dis-
trict Court in and for the Northern District of
California, Second Division.*

No. 16,195.

NORVENA LINEKER and FREDERICK V.
LINEKER,

Plaintiffs,

vs.

MARY J. DILLON (Formerly MARY J. TYNAN)
and THOMAS B. DILLON,

Defendants.

Assignment of Errors.

The defendants and plaintiffs in error in the above-entitled action Mary J. Dillon (formerly Mary J. Tynan) and Thomas B. Dillon herewith file in the above-entitled court their petition for a writ of error in the said cause from the judgment therein duly given and made on October 3, 1919, and thereafter modified on motion for a new trial on January 5, 1920, and with said petition file the following assignment of errors upon which they will rely in their prosecution of the said writ of error, to wit:

(1) That the Court erred in assuming jurisdic-

tion of the action in that the amount in controversy herein, exclusive of interest and costs, did not or does not exceed the sum of Three Thousand Dollars (\$3,000.00); that the amount in controversy herein, exclusive of interest and costs, does not exceed the sum of Twenty-eight Hundred Dollars (\$2,800.00); that therefore the Court erred in assuming jurisdiction of the cause of action or in giving judgment therein for any amount.

(2) That the District Court erred in giving, rendering or entering judgment upon the verdict in the above-entitled cause on the ground that the complaint in said cause did not state [55] facts sufficient to constitute a cause of action.

(3) The said District Court erred in giving or entering judgment in the said cause in the sum of Thirty-two Thousand Dollars (\$32,000.00) and costs, or in the sum of Twenty-eight Thousand Dollars (\$28,000.00) and costs as modified, on the ground that the complaint in said action does not state facts sufficient to entitle the plaintiffs, or either of them, to judgment in the full amount of said sums, or either of said sums, or in any other sum whatever in excess of Twenty-eight Hundred Dollars (\$2800.00).

(4) That the complaint in said action does not state facts sufficient to constitute a cause of action.

(5) That the complaint in said action being upon an alleged breach of contract does not show that plaintiffs, or either of them, suffered any damage from the alleged breach of contract in the sum of Thirty-two Thousand Dollars (\$32,000.00) or in the sum of Twenty-eight Thousand Dollars (\$28,000.00).

or in any other sum exceeding Twenty-eight Hundred Dollars (\$2800.00) or in any sum whatever.

(6) That the complaint in the said action is insufficient nor does it state facts sufficient, to support any judgment in favor of plaintiffs, or either of them, in any amount in excess of Twenty-eight Hundred Dollars (\$2800.00) and costs.

(7) That the Court erred in failing to sustain the demurrer to the complaint in the above-entitled action.

(8) That the judgment in the said cause as originally given as well as the judgment in the said cause as modified on January 5, 1920, is wrong and contrary to law in this; that under the said complaint no case was proven or could have been proven sufficient to entitle the plaintiffs, or either of them, to damages in the sum awarded, or in any other sum whatever in excess of Twenty-eight Hundred Dollars (\$2800.00). [56]

(9) That the judgment in the said cause as originally given as well as the judgment in the said cause as modified on January 5, 1920, is wrong and contrary to law in this: That it is made payable out of the community property of Thomas B. Dillon, or out of the community property of the defendants; that it is not limited so as to be made payable solely out of the separate property of defendant Mary J. Dillon, and that the Court erred in giving or entering the said judgment so as to be enforceable out of said community property.

WHEREFORE, the said defendants pray that upon these grounds alleged as errors in the action

of the above-entitled court, the said judgment be reversed, and they further pray for such other or further order as may be proper.

SAMUEL M. SHORTRIDGE,

Attorney for Defendants and Plaintiffs in Error.

[Endorsed]: Filed Feb. 9, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [57]

In the Southern Division of the United States District Court in and for the Northern District of California, Second Division.

No. 16,195.

NORVENA LINEKER and FREDERICK V.
LINEKER,

Plaintiffs,

vs.

MARY J. DILLON (Formerly MARY J. TYNAN)
and THOMAS B. DILLON,

Defendants.

Order Allowing Writ of Error.

On reading and filing the petition of defendants for a writ of error in the above-entitled cause accompanied by assignments of error, and motion of Samuel M. Shortridge, Esq., attorney for defendants,

IT IS ORDERED, that a writ of error be and is hereby allowed to defendants to have reviewed in the United States Circuit Court of Appeals in and for the Ninth Circuit, the judgment heretofore entered herein against the defendants on October 3,

1919, as modified on motion for a new trial herein on January 5, 1920, and that the amount of the bond for costs on said writ of error be and is hereby fixed at Three Hundred Dollars (\$300.00) for the prosecution of said writ.

Dated: February 9th, 1920.

WM. C. VAN FLEET,
District Judge.

[Endorsed]: Filed Feb. 9, 1920. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [58]

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND.

The premium charged Pacific Coast Dept.
for this bond is Office.
\$10.00 per annum. San Francisco, Cal.

Home Office:
Baltimore, Md.

*In the Southern Division of the United States Dis-
trict Court in and for the Northern District of
California, Second Division.*

No. 16,195.

NORVENA LINEKER and FREDERICK V.
LINEKER,

Plaintiffs,

vs.

MARY J. DILLON (Formerly MARY J. TYNAN)
and THOMAS B. DILLON,

Defendants.

Bond on Writ of Error.

WHEREAS, in the above-entitled action in the Southern Division of the United States District Court in and for the Northern District of California, Second Division, a judgment in favor of plaintiffs and against defendants was made and entered on October 3, 1919, and thereafter modified on motion for a new trial on January 5, 1920; and

WHEREAS, the said defendants are dissatisfied with the said judgment as so modified, and have sued out a writ of error to the United States Circuit Court of Appeals, for the Ninth Circuit, to reverse the said judgment.

NOW, THEREFORE, in consideration of the premises and of such writ of error the Fidelity and Deposit Company of Maryland, a corporation having its principal place of business in Baltimore, Maryland, duly incorporated under the laws of the State of Maryland, and authorized to transact business in the State of California, does hereby undertake in the sum of Three Hundred (\$300.00) Dollars, and promise on the part of the said defendants to and with said plaintiffs, that said defendants shall prosecute said [59] writ of error to effect and if they fail to make their plea good, shall answer all costs awarded against them, or either of them, upon the said writ of error or a dismissal thereof, not exceeding the aforesaid sum of Three Hundred Dollars (\$300.00), to which amount it acknowledges itself bound.

And the said Fidelity and Deposit Company of

Maryland further agrees that in case of a breach of any condition of this instrument, the above-entitled court may upon notice to it of not less than ten days proceed summarily in the said action to ascertain the amount which such surety is bound to pay on account of such breach, and render judgment therefor against it, not exceeding Three Hundred Dollars (\$300.00), and award execution therefor.

Dated at San Francisco, California, this 16th day of February, 1920.

[Corporate Seal]

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND,

By C. K. BENNETT,
Attorney in Fact.

Attest: PAUL M. NIPPERT,
Agent.

Approved February 17th, 1920. Not to operate as
a supersedeas.

WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed Feb. 17, 1920. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [60]

In the Southern Division of the United States District Court in and for the Northern District of California, Second Division.

No. 16,195.

NORVENA LINEKER and FREDERICK V.
LINEKER,

Plaintiffs,

vs.

MARY J. DILLON (Formerly MARY J. TYNAN)
and THOMAS B. DILLON,

Defendants.

Praeceptum for Transcript of Record.

To the Clerk of the Above-entitled Court:

Sir: Please prepare, annex to and return to the United States Circuit Court of Appeals for the Ninth Circuit with the writ of error heretofore issued in the above-entitled action an authenticated transcript of the following:

The judgment-roll in said action, including therein the complaint, demurrer, answer, verdict, judgment as originally entered on October 3, 1919, and the final judgment as modified on motion for a new trial on January 5, 1920.

The petition for a writ of error therein, and the assignment of errors.

The order allowing the writ of error.

The undertaking on writ of error.

The writ of error and original citation thereon with proof of service thereof.

This praecipe for transcript of record.

SAMUEL M. SHORTRIDGE,

Attorney for Defendants.

Receipt of a copy of the within praecipe for transcript of record is hereby admitted this 17th day of February, 1920.

JOHN L. TAUGHER,
Attorney for Plaintiffs.

[Endorsed]: Filed Feb. 17, 1920. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [61]

In the Southern Division of the United States District Court, for the Northern District of California, Second Division.

No. 16,195.

NORVENA LINEKER et al.,

Plaintiffs,

vs.

MARY J. DILLON (Formerly MARY J. TYNAN),
et al.,

Defendants.

Certificate of Clerk U. S. District Court to Transcript of Record.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify the foregoing pages, numbered from 1 to 61, inclusive, to be full, true and correct copies of the record and proceedings as enumerated in the praecipe for record on writ of error, as the same remain on file and of record in the above-entitled cause, in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is \$27.20; that said amount was paid by the defendants, and that the original writ of error and citation issued in said cause are hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 12th day of March, A. D. 1920.

[Seal]

WALTER B. MALING,

Clerk United States District Court, for the Northern District of California. [62]

Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the Northern District of California, GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Mary J. Dillon (formerly Mary J. Tynan) and Thomas B. Dillon, plaintiffs in error, and Norvena Lineker and Frederick V. Lineker, defendants in error, a manifest error hath happened, to the great damage of the said Mary J. Dillon (formerly Mary J. Tynan) and Thomas B. Dillon, plaintiffs in error, as by their complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice

done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, the 17th day of February, in the year of our Lord one thousand nine hundred and twenty.

[Seal] WALTER B. MALING,
Clerk of the United States District Court for the
Northern District of California.

By J. A. Schaertzer,
Deputy Clerk.

Allowed by

WM. C. VAN FLEET,
District Judge. [63]

Receipt of a copy of the within writ of error is hereby admitted this 17th day of February, 1920.

JOHN L. TAUGHER,
Attorney for Defendants in Error.

(Return to Writ of Error.)

The answer of the Judge of the District Court of the United States, in and for the Northern District of California, Second Division.

The record and all proceedings of the plaintiff whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

[Seal]

WALTER B. MALING,
Clerk United States District Court, Northern District of California.

[Endorsed]: No. 16,195. United States District Court for the Northern District of California. Mary J. Dillon (Formerly Mary J. Tynan) and Thomas B. Dillon, Plaintiffs in Error, vs. Norvena Lineker and Frederick V. Lineker, Defendants in Error. Writ of Error. Filed Feb. 17, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

Citation on Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Norvena Lineker and Frederick V. Lineker, Defendants in Error, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals

for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the clerk's office of the United States District Court for the Northern District of California, wherein Mary J. Dillon (formerly Mary J. Tynan) and Thomas B. Dillon are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 17th day of February, A. D. 1920.

WM. C. VAN FLEET,
United States District Judge. [64]

Receipt of a copy of the within citation on writ of error is hereby admitted this 17th day of February, 1920.

JOHN L. TAUGHER,
Attorney for Defendants in Error.

[Endorsed]: No. 16,195. United States District Court for the Northern District of California. Mary J. Dillon (formerly Mary J. Tynan) and Thomas B. Dillon, Plaintiffs in Error, vs. Norvena Lineker and Frederick V. Lineker, Defendants in Error. Citation on Writ of Error. Filed Feb. 17, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 3465. United States Circuit Court of Appeals for the Ninth Circuit. Mary J. Dillon (Formerly Mary J. Tynan) and Thomas B. Dillon, Plaintiffs in Error, vs. Norvena Lineker and Frederick V. Lineker, Defendants in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Filed March 13, 1920.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.